

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2568 OF 2004

M/s. R. K. Metal Works

..Petitioner.

Vs.

Smt. Vimal G. Burkul

..Respondent.

....

Mr. A.K. Jalisatgi with Mr. D.S. Hatle for the Petitioner.

CORAM: DR. D.Y. CHANDRACHUD, J.

20th November, 2006.

P.C. :

1. The Petitioner before the Court is the employer and at the material time was engaged in the business of manufacturing tin containers. The Respondent was employed as a helper in October, 1986. The case of the Petitioner is that the Respondent submitted her resignation voluntarily and left service on 30th April, 1988. On 7th September, 1990 the Petitioner received a letter of demand from the Respondent alleging that she was in employment until 6th September, 1990 and that her services were illegally terminated on 7th September, 1990. A reference was made by the State Government under Section 10(1) of the Industrial Disputes Act, 1947. During the pendency of the reference, the Petitioner

closed down the business with effect from 10th March, 2000. Evidence was adduced before the Labour Court and by an award dated 31st January, 2004 the Labour Court allowed the reference in part. The Petitioner was directed to pay 50% of the backwages to the Respondent between 7th September, 1990 and 10th March, 2000.

2. The award of the Labour Court was challenged in these proceedings and during the pendency of the Petition the award was stayed in so far as backwages were concerned.

3. At the hearing of the petition Counsel appearing for the Petitioner submitted that there was absolutely no cogent evidence on the part of the Respondent, in so far as the question of backwages is concerned. Hence, it was urged that the award of 50% backwages during the period 7th September, 1990 till 10th March, 2000 on which date closure came to be effected is unsustainable. The Respondent has not appeared before the Court despite the service of the rule.

4. Recent judgments of the Supreme Court have

emphasized that an award of backwages cannot follow as a matter of course and the Labour Court before awarding backwages has to be duly satisfied that the workman was not engaged in other gainful employment. In the present case, the period in question is of almost one decade viz. between 7th September, 1990 and 10th March, 2000. In my view, there is merit in the submission urged on behalf of the Petitioner. The grant of 50% backwages would have to be suitably modified. On behalf of the Petitioner a chart has been placed on the record of these proceedings. The Respondent was drawing wages of **Rs.24.80** per day which would approximately work out to Rs.645/- per month. 30% of the backwages for the concerned period would work out to Rs.22,052/-. Fairly on behalf of the Petitioner it has been stated that it would be appropriate if this Court were to pass an order for the payment of Rs.30,000/- as a lump sum in lieu of the claim for backwages. As already noted earlier, the business of the employer is closed with effect from 10th March, 2000 and there is therefore no question of reinstatement. The submission which has been made on behalf of the employer by learned counsel is fair and proper. The award of the Labour Court shall accordingly stand modified in terms of a direction that the Petitioner shall pay to the

Respondent an amount of Rs.30,000/- in lieu of the claim for reinstatement and backwages. Counsel appearing for the Petitioner has stated that the aforesaid amount shall be deposited in this Court within a period of three weeks from today. Since the Respondent has not appeared before the Court, it will be necessary for the Court to issue some directions that would ensure that the amount is disbursed to the Respondent. Upon deposit of the amount by the Petitioner, the Prothonotary & Senior Master shall issue notice to the Respondent. The address of the Respondent that has been furnished in the writ petition is the address of Bombay Kamgar Kranti Sanghatana. The union to whom the notice would be issued by the Prothonotary & Senior Master shall take steps to inform the Respondent of the order of the Court so as to enable the Respondent to move the Prothonotary & Senior Master for disbursement of the amount upon deposit. The Prothonotary shall pay over the amount of Rs.30,000/- to the Respondent subject to verification of the identity of the Respondent. The Petition is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.